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Attorneys for Plaintiff  
ZINUS, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ZINUS, INC., a California corporation,	)	Case No.: C07-03012 PVT
	)	
Plaintiff,	)	<b>DECLARATION OF DARIEN</b>
	)	<b>WALLACE IN SUPPORT OF ZINUS’</b>
v.	)	<b>OPPOSITION TO DEFENDANTS’</b>
	)	<b>MOTION FOR ENLARGEMENT OF</b>
SIMMONS BEDDING COMPANY,	)	<b>TIME TO RESPOND TO COMPLAINT</b>
a Delaware corporation, and	)	
DREAMWELL, LTD., a limited	)	
liability company of Nevada,	)	
Defendants.	)	The Honorable Patricia V. Trumbull
	)	

I, Darien K. Wallace, declare:

1. I am a member of the Bar of this Court and an attorney with the law firm of Imperium Patent Works, counsel of record for plaintiff Zinus, Inc. (“Zinus”) in this case. If called upon as a witness, I could and would competently testify to the truth of each statement herein.

2. On June 11, 2007, Zinus filed a Complaint For Declaratory Judgment and Unfair Competition in Violation of the Lanham Act against Simmons Bedding Company and Dreamwell, Ltd. (collectively, the “Defendants”).

3. On June 19, 2007, I received a call from Agnes Lee and Clara DeQuick, who said they were in-house counsel at Simmons Bedding Company. They said they were calling me in

1 response to a call between Scott Reeves, President of Zinus, and Charlie Eitel, CEO of  
2 Simmons Bedding Company. Ms. DeQuick stated that Simmons makes a thorough and  
3 deliberate decision before sending out cease-and-desist letters, such as the claim letter dated  
4 May 18, 2007, sent to Wal-Mart by an attorney at Ropes & Gray on behalf of the Defendants.  
5 (The cease-and-desist letter from Simmons is attached as Exhibit R-B to the accompanying  
6 Declaration of Scott Reeves and as Exhibit D to the Complaint in this case.) Ms. DeQuick  
7 stated that Simmons had analyzed Zinus' Mattress-in-a-Box product with relation to the claims  
8 of United States Patent Number Re. 36,142 ("the '142 Patent") before representatives of  
9 Simmons visited Zinus' factory in China in March 2007. Ms. DeQuick stated that Zinus must  
10 take a license to the '142 Patent and pay a royalty on sales of Zinus' Mattress-in-a-Box  
11 product.

12  
13 I declare under penalty of perjury under the laws of the United States of America that  
14 the forgoing is true and correct.

15 Executed this 11th day of July 2007 in Sunol, California.

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17 By: /Darien K. Wallace/  
18 Darien K. Wallace  
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